



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

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July 22, 1996

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Mr. William F. Caton  
Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Billed Party Preference for  
InterLATA 0+ Calls; CC Docket No. 92-77

Dear Secretary Caton:

Enclosed are an original and seven copies of the Initial Comments and Motion to File Late-Field Comments of the Pennsylvania Public Utility Commission in the above-captioned proceeding.

Very truly yours,

Maureen A. Scott  
Assistant Counsel

cc: International Transcription Service

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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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<b>In the Matter of</b>	)	
	)	
<b>Billed Party Preference for</b>	)	<b>CC Docket No. 93-77</b>
<b>InterLATA 0+ Calls</b>	)	

**MOTION OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION  
FOR LEAVE TO FILE INITIAL COMMENTS OUT-OF-TIME**

Pursuant to 47 C.F.R. Section 1.46, the Pennsylvania Public Utility Commission ("PaPUC") respectfully requests leave to file its initial Comments out-of-time in the above-captioned proceeding. In support thereof, the PaPUC states as follows:

1. The PaPUC is the state agency responsible for the regulation of all public utilities, including telecommunications, within the Commonwealth of Pennsylvania. As such, it has a significant interest in the regulation of telecommunications services at the interstate, as well as the intrastate levels.

2. On June 4, 1996, the FCC issued a Second Further Notice of Proposed Rulemaking in which it established the deadline for initial comment 30 days after the date of publication in the Federal Register or until July 17, 1996.

3. The PaPUC is currently under staffed and thus was unable to complete its comments for this proceeding in the time frame established in the FCC's June 4, 1996 Order.

4. No party will be prejudiced by the PaPUC's late-filed Comments, as the Comments are only three (3) business days out-of-time, and the PaPUC intends to immediately serve all parties of record.

5. If the Commission rejects the PaPUC's Motion to file Comments out-of-time, PaPUC respectfully requests the FCC to consider the attached Comments as ex parte pursuant to 47 C.F.R. Sections 1.1200-1.1216.

WHEREFORE, in light of the foregoing, the PaPUC respectfully moves that it be permitted to submit the attached initial Comments out-of-time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Maureen Scott', written over a horizontal line.

Maureen A. Scott  
Assistant Counsel

Attorney for the Pennsylvania  
Public Utility Commission

Dated: July 22, 1996.

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**RECEIVED  
JUL 25 1996  
FCC MAIL ROOM**

**In the Matter of** )  
 ) **FCC 96-253**  
**Billed Party Preference for** ) **CC Docket No. 92-77**  
**InterLATA 0+ Calls** )

**INITIAL COMMENTS OF THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
ON THE SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

**I. Introduction**

The Pennsylvania Public Utility Commission ("PaPUC") submits the following initial Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Second Further Notice of Proposed Rulemaking ("Second FNPR") at this docket released June 6, 1996. The PaPUC has been an active participant in all phases of this proceeding since its inception in 1992, and incorporates by reference its Reply Comments filed on May 2, 1995.

The PaPUC supports the FCC's tentative decision to utilize a combination of consumer safeguards as an interim measure until the cost and competitive concerns surrounding Billed Party Preference ("BPP") are resolved. In particular, the PaPUC supports the FCC's tentative conclusion to "(1) establish benchmarks for OSP rates and associated charges that reflect what consumers expect to pay, and, (2) require OSPs that charge rates and/or allow related premises-owner fees whose total is greater than a given percentage above a composite of the 0+ rates charged by the three largest interstate interexchange carriers to disclose the applicable charges for the call to consumers before connecting a call. Second FNPR at para. 3. Together, these requirements should prevent rate gouging by unscrupulous OSPs which continues to be a significant concern and problem at both the federal and state levels.

## **II. Discussion**

### **A. PaPUC Supports the FCC's Conclusion to Adopt Alternatives to Billed Party Preference Until BPP is a More Cost Effective Solution.**

The PaPUC agrees with the FCC's conclusion that BPP will generate significant benefits for consumers. Nonetheless, given the estimated \$ 1 billion price tag to implement BPP, the costs of implementing BPP appear to greatly exceed the benefits at this time. Therefore, the PaPUC supports the FCC's conclusion to adopt a combination of consumer safeguards as an interim measure until BPP becomes a more cost effective option. These consumer safeguards will provide some of the more important benefits of BPP until BPP becomes a more cost effective option.

Further we agree with the FCC that the costs associated with BPP implementation in the future will likely decline, particularly as local number portability develops which is mandated under § 251(b)(2) of the 1996 Act. Second FNPR at para. 4. In this regard, the PaPUC also agrees that if "local exchange carriers are required to install the facilities needed to perform database queries for number portability purposes for each call, the incremental cost to query the database for the customer's preferred OSP might well be less than the incremental benefits that BPP would provide." Second FNPR at para. 4. Consequently, we support the FCC's conclusion to reexamine the costs/benefits associated with BPP implementation as carriers deploy more advanced technology in conjunction with local number portability.

### **B. PaPUC Supports the FCC's Proposal to Establish a Benchmark Rate Which Reflects Built In Cost and Price Differences In the Underlying Carrier Rate Schedules.**

The PaPUC strongly supports the FCC's proposal to establish a benchmark rate or rate ceiling which an OSP could not exceed absent FCC approval. As the FCC notes in its

discussion at para. 16, there was a general consensus among most of the commenters that benchmarks should be established to address the problem of excessive OSP rates and related premises-imposed fees ("PIFs") or surcharges for calls from payphones. The PaPUC considers rate caps to be an essential component of any meaningful interim measure until BPP becomes a more cost effective service option.

In Pennsylvania, rates are capped at the charge for the long distance call not to exceed the highest daytime tariff charge of any facilities based carrier for the interexchange call plus the location surcharge. AOS providers are not allowed to charge rates in excess of the caps until they establish through an evidentiary hearing that their costs exceed the maximum allowed rate, and therefore, that the higher rates are just and reasonable. By Order entered April 25, 1996, the PaPUC initiated a Proposed Rulemaking to cap the location surcharge on intrastate OSP calls in Pennsylvania at \$1.00.<sup>1</sup>

As indicated in this Commission's Reply Comments filed on May 2, 1995 with the FCC at this docket, we continue to believe that the CompTel Coalition's proposed benchmarks are excessive and would not function as a meaningful cap since the rate levels were set based upon consumer complaint levels, not reasonable consumer expectations. PaPUC believes that the FCC's proposal to set a benchmark for OSP rates at some percentage level of the average of the three largest OSPs is worth consideration if the extra price-variance margin is set at a level within customer expectations. The PaPUC also agrees with the conclusion that consumer expectations are reasonably reflected by the rates charged by the three largest OSPs. The exact

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<sup>1</sup>Rulemaking Regarding Interexchange Reseller Location Surcharges; 52 Pa. Code §§ 63.111-63.118, Proposed Rulemaking Order, L-0096 (Entered April 25, 1996).

additional price margin should not exceed the proposed fifteen percent (15%). Second FNPR at para. 24.

Nonetheless, PaPUC must qualify its support contingent upon the FCC's adopting a benchmark structure that incorporates criteria which would cause the cost, and therefore, the price of a call to vary. In this regard, the PaPUC supports the FCC's proposed criteria set out at para. 26 of its NOPR: (1) how much live or automated operator assistance it requires; (2) whether the called number is entered by the caller; (3) the time of day; (4) whether it lasted for the initial minute only or whether it included subsequent minutes; (5) the distance covered; (6) whose credit card is used.

Consistent with our earlier Comments at this docket, we believe that it is particularly important that the benchmark include variables for automated and non-automated calls and time of day. To do otherwise would deny consumers the significant savings on calls that they have already come to expect.

**C. OSPs Should Not Be Allowed to Exceed the Benchmark Without Prior FCC Approval and OSPs Exceeding the Benchmark Should be Required to Disclose To Consumers the Actual Price of the Call.**

The FCC seeks comment on the three different types of consequences for OSPs that desire to charge rates above the chosen benchmark: (1) cost support for such rates; (2) a message warning callers that their rates may be higher than expected; or (3) the price of the call. The PaPUC supports imposition of all three of these options, and at a minimum imposition of options 1 and 3.

Merely requiring the OSP to provide cost support for rates which exceed the FCC's established benchmark, will not alert the consumer to the fact that the particular OSP's rates will

exceed the consumer's expectations. Consumers should be alerted through a message warning when the rates charged by the OSP are higher than average, or what they would otherwise expect to be charged for the call. The consumer would then have the option in such circumstances to terminate the call and have the call carried by another carrier.

We agree with the FCC's tentative conclusion in para. 35 that disclosure of either the highest rate that it would charge the caller for a seven-minute call, or alternatively, its average rate for a seven-minute call would probably be more meaningful and effective in providing callers with an "opportunity to make informed choices in making operator services calls." We also agree with the FCC's findings in para. 36 that either of these disclosure requirements would ensure that consumers do not "unintentionally or inadvertently use carriers that charge unexpected high rates for interstate calls or use such carriers only because they are unaware that they have other options." We also agree that this disclosure requirement could eliminate prices charged in excess of competitive rates and should save consumers money. Second FNPR at para. 36. However, disclosure alone will not effectively accomplish the FCC's objectives.

It is equally important that the Commission require OSPs, that desire to charge in excess of the benchmark rate, to justify their alleged higher costs of providing service. Without this requirement, the cap established by the FCC is not a "cap" in the true sense of the term. Without a meaningful cap PaPUC envisions that unscrupulous OSPs will simply continue charging their current excessive rates and manipulate any disclosure requirement to their own advantage undermining the FCC's objectives.

The PaPUC, although it strongly supports the addition of a audible disclosure of the applicable rate and charges prior to connecting any interstate 0+ call, still maintains that



regulatory oversight of OSP rates through the use of benchmarks and regulatory approvals is necessary. Due to the very nature of the market place, an informed public may not be sufficient to eliminate price abuse.

**D. The FCC Should Not Forbear At This Time From Requiring Informational Tariff Filings Under TOCSIA.**

At paras. 38 through 44, the FCC seeks comment on whether it should forbear from applying the informational tariff filing requirements mandated by TOSCIA. Under the 1996 Act, Section 10(a) of the Communications Act, the FCC is required to forbear from applying any regulation or any provision of the Act to a telecommunications carrier or service or class of services or carriers, in any or some of its geographic markets if the Commission determines that-

- (1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;
- (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and
- (3) forbearance from applying such provision or regulation is consistent with the public interest.

Simply put, forbearance of the OSP informational tariff filings required by TOSCIA do not meet the requirements set forth above. Nor are the criteria for waiver of this requirement contained in TOSCIA met i.e., that such tariffs are no longer necessary to: (1) protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and (2) ensure that consumers have the opportunity to make informed choices in making such calls.

As the Commission itself has recognized in prior phases of this proceeding, despite

passage of TOSCIA, both state and federal regulatory agencies continue to receive a significant number of complaints regarding excessive charges by OSPs.<sup>2</sup> PaPUC believes that informational tariffs will still serve a very useful purpose after the FCC establishes a benchmark rate since they will provide a ready source to verify OSP rate levels and whether they are actually below the benchmark, and how much. They will also ensure compliance with regard to future adjustments resulting from rate changes by the underlying three largest IXC's. Further, it remains very unclear at this time whether detariffing carriers will actually be administratively efficient or whether such a step, although appearing attractive on its face, will actually increase administrative burdens in the long run.

Because of these concerns, we believe it would be premature at this time for the FCC to either forbear from enforcing or to waive TOSCIA's informational tariff filing requirement. The ready availability of these tariffs at the federal level will ensure easy access to interstate prices to state commissions and consumer advocates which is important in making market price comparisons or analyses which assist in identifying problem providers and in bringing enforcement actions where necessary.

Finally, we fully endorse the FCC's proposals in Subpart F which would "require all OSPs to include in tariffs filed pursuant to Section 226 of the Communications Act specific and discernible rates and charges rather than a range of rates." Second FNPR at para. 47. The

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<sup>2</sup>In footnote 22 of its Notice, the FCC states that it has received more than 4,160 complaints about OSPs' interstate rates and 880 complaints about their intrastate rates between August 1, 1994 and August 31, 1995. The FCC goes on to state that the rate of such complaints appears to be increasing and that more than 525 complaints about OSPs' interstate rates and more than 115 complaints about their intrastate rates were received in August of 1995 alone.

proposal, however, to waive tariff filing requirements for OSPs that certify that their tariff is within the FCC benchmark may ultimately undermine the tariff filing requirements and prove an administrative enforcement nightmare.

Informational tariff filings will assist the FCC in accomplishing what should be the FCC's primary goal in this proceeding, i.e., the elimination of consumer abuse in the OSP marketplace. The other concern identified in the NOPR, e.g., the impact of tariffs on competition should only be a secondary consideration at this point in time.

### **III. Conclusion**

In conclusion, the PaPUC supports the FCC's proposal to adopt a benchmark price based upon some percentage above the average rates of the three largest interexchange carriers, AT&T, MCI and Sprint, as long as the benchmark rate structure incorporates the underlying cost variables which affect the prices charged by the underlying carriers. Before an OSP is allowed to exceed the benchmark, it should be required to file cost support data with the FCC and obtain FCC approval. OSPs should also be required to disclose to consumers the actual price of the call, when it exceeds the benchmark level established by the FCC.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Maureen Scott", written over a horizontal line.

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Dated: July 22, 1996.